THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE Dr. JUSTICE G. YETHIRAJULU

WRIT APPEAL No.2361 OF 2005

JUDGMENT: (Per Hon'ble Sri Justice B. Prakash Rao)

The appellants which are Syndicate Bank represented by its Divisional Manager, Zonal Office, Hyderabad and Manager, Syndicate Bank, Vempet Branch, Vempet, Karimnagar District filed this writ appeal under Section 15 of the Letters Patent aggrieved against the orders of the learned Single Judge in W.P.No.13799 of 1998 dated 22.8.2005 allowing the writ petition filed by the respondent herein for a mandamus declaring the action of the appellants in dispensing with his service by oral orders as arbitrary and illegal.

Heard Sri K. Sreenivasa Murthy, learned counsel for the appellants and Sri G.S.Rao learned counsel for the respondent herein.

Respondent stated that on completion of his S.S.C. and registering with the local employment in response to the notification issued by the appellants, he was sponsored by the Employment Exchange. Accordingly, he was appointed as an attender in the Karimnagar Town branch of the appellants-Bank through a letter dated 9-7-1985 subject to the process of selection. Later, he was transferred to Vempet Branch and since then, he has been working. However, no salary was paid from April, 1998 and even for the month of January, 1998 a part of the salary was paid. Even though there has been sanctioned posts for quite long time, he was transferred to Vempet, as there was a clear vacancy as pointed in the affidavit and in spite of the name of the respondent standing at Serial No.10 in the list of attenders issued by the Divisional Manager on 7-5-1997, suddenly and surprisingly, the respondent was informed that his

services were no longer required and they stood terminated after 31-3-1998. The case of the respondent-writ petitioner was that in fact he worked for a period of 1611 days from 22.5.1992 to 31-3-1998 as mentioned below:

Dates	Days
22-5-1992 to 31-12-1992	184
1-1-1993 to 31-12-1993	269
1-1-1994 to 31-12-1994	202
1-1-1995 to 31-12-1995	192
1-1-1996 to 31-12-1996	366
1-1-1997 to 31-12-1997	334
1-1-1998 to 31-3-1998	64

Therefore, since he had completed 240 days or 90 days, he is entitled for empanelment for the purpose of absorption in the category of persons who have worked for more than 240 days or 90 days. That apart, entitlement for regularization of services and period of termination is mandatory provision under Section 25-F of Industrial Disputes Act, 1947. Hence, the writ petition.

Contesting the claim of the respondent, the case of the appellants was that the respondent could not be employed for want of absorption since he does not come under any of the categories under 240 or 90 days as he did not work for specific number of days from 22-5-1992 to 31-3-1998. Thus he is not entitled for being absorption. Therefore, there is no absolute enforceable right in his favour and he cannot make any claim as such. Having regard to the settlement which has been arrived at between the employees and the management and having regard to the finding by this Court and having regard to the decision in W.A No.1444 of 1997, the question of considering the case of the respondent does not arise and apart from that, he did not find place in the management and therefore, no relief can be granted. However, the learned single judge by summoning the records especially the original of Attenders register and having relied on the principles laid down in **RADHA RAMAN SAMANTA v. BANK**

OF INDIA AND OTHERS ([1]) holding that examination of undisputed facts is not debarred in a proceeding under Article 226 of the Constitution and therefore, the same is contrary to the provisions of Section 25-F of the Industrial Disputes Act, held that the main action of dispensing with the service of the respondent is arbitrary and illegal and ultimately allowed the writ petition.

Learned Counsel appearing on behalf of the appellant mainly submitted that primarily the very writ petition filed seeking the claim under Section 226 of Constitution of India is not maintainable as the appellant is not a factory within the meaning of the provisions of Industrial Disputes Act 1947. It is further contended that in view of the settlement arrived at between the employees of the Bank and management and the workers of this Court, which has been considered in W.A.1444 of 1997 dated 10-4-1998, no right can be claimed. Therefore, the learned single judge ought not to have allowed the writ petition.

Learned counsel on behalf of the respondent has raised his contention basing on the finding of the learned single Judge and in terms of the aforesaid decision cited supra, the action of the appellants in terminating the services of the respondent is rightly held to be illegal and thus it does not warrant any interference.

Having considered the submissions made on either side and on perusal of the material on record, the only point that arises for consideration is as to whether under the facts and circumstances, the action of the appellants in terminating the services of the respondent is valid and (2) To what relief that can be given?

There is no dispute with regard to the primary chequered events namely that in pursuance of the proposals made through the employment exchange, the respondent was initially taken into service as an attender in the branch office at Karimnagar Town and subsequently, he was transferred to Vempet Branch and since then he has been working there.

The case of the respondent/petitioner squarely rests on the factum of he being in service and working in the category of 240 days during the relevant period and there is violation of Section 25-F of the Industrial Disputes Act. No doubt, it was held in the aforesaid decision of **RADHA RAMAN SAMANTA,** the Court can verify undisputed facts. There is no dispute with regard to period of working which the learned single judge tried to verify on the production of documents. Be that as it may, and also in respect of the fact that he has worked for 240 days of service, a glaring aspect of the case which apparently was not referred before the learned single Judge in regard to the settlement between the employees and the management of the Bank which is in supersession of the earlier settlement and understanding which has become subsequently an award and the same was also declared as valid and binding by this Court as per the orders in W.P.No.21405 of 1995. Even in the appeal filed by the appellants herein in W.A. No.1444 of 1997, the same was allowed on 10-4-1998 with a direction to absorb the temporary attenders, who are empanelled in three or four years and an undertaking was given to that effect by the Bank. There is absolutely no serious dispute as to the settlement as arrived at and also the proceedings arising thereafter, and no explanation is forthcoming on behalf of the respondent as to how and in what manner, he can claim any relief as sought for in view of the terms and conditions arrived at between the settlement and the award. It is now well settled that even under the provisions of Industrial Disputes Act, 1947, the settlement which is also held to be valid is binding in all its course between the employees and the Bank.

Having regard to the very settlement arrived at between the parties, the petitioner cannot try to make any claim in the absence of any such employment. Learned single judge did not consider this aspect and also the fact of the settlement. Thus on an appraisal of the facts and circumstances of the case and also in view of the said

settlement and orders of this Court, it cannot be said that the case of the respondent fits in any way for considering the relief sought for and as such, the action of the appellants cannot be found fault with and no such relief can be granted to the respondent by invoking the jurisdiction of this Court under Article 226 of Constitution of India.

In view of the aforesaid reasons, the writ appeal is allowed and the writ petition filed by the respondent herein stands dismissed setting aside the order impugned. No costs.

_____

B. PRAKASH RAO, J

22nd August, 2006.

_____

G. YETHIRAJULU, J

dvs.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

THE HON'BLE Dr. JUSTICE G. YETHIRAJULU

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

WRIT APPEAL No.2361 OF 2005

(Judgment delivered by the Honourable Sri Justice B.Prakash Rao)

Dated 22 -8-2006

[1] 2004 (1) Supreme 134